



Comptroller General
of the United States

1248339

Washington, D.C. 20548

Decision

Matter of: Taricco Corporation

File: B-256728.2

Date: September 23, 1994

Tari Taricco for the protester,
Craig E. Hodge, Esq., and Bruce H. Bartholomew, Esq.,
Department of the Army, for the agency,
Robert Arsenoff, Esq., and John Van Schaik, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

1. Protest against allegedly restrictive specifications is denied where, contrary to the protester's allegations, the challenged specifications are broadly stated functional requirements.
2. Protest against allegedly complex proposal preparation instruction and evaluation provisions is denied where record shows the provisions were reasonably necessary to effectuate a "best value" procurement for complex equipment.

DECISION

Taricco Corporation protests the terms of request for proposals (RFP) No. DAAJ09-93-R-0706, issued by the Department of the Army for the design, construction, and installation of an autoclave system to be used in the overhaul of UH-60 helicopter blades at the Corpus Christi (Texas) Army Depot.¹

We deny the protest.

In response to an earlier Taricco protest--which challenged certain specifications as being designed around Thermal Equipment Corporation (TEC) products, alleged that RFP sections L (proposal submission instructions) and M (evaluation methodology) were excessively complex, and urged that the procurement should be set aside for small business--the Army amended the RFP to respond to some of

¹An autoclave, as the term is used in this procurement, is a cylindrical pressurized industrial oven that is custom-built to government specifications for the bonding and processing of aerospace structures made of composite materials.

Taricco's concerns and to set the procurement aside for small business.

In its current protest, dated May 17, 1994, Tarrico repeated its contentions concerning sections L and M of the RFP and its challenge that various provisions of the specifications were proprietary to TEC. By letter dated May 26, Taricco supplemented its protest and essentially acknowledged that the only specifications remaining which it viewed as "proprietary and exclusive" were paragraphs 12.6 (involving heating and cooling coils, a fan, and related equipment) and 19.0 (involving the fan system for the autoclave).² In its comments on the agency report, Taricco expressed its continuing interest in a decision on the merits of the "technical issues,"; its allegations regarding sections L and M of the RFP; and its general allegation that the agency has acted in bad faith throughout the procurement to favor TEC.

SPECIFICATION PARAGRAPHS 12.6 AND 19.0

Paragraph 12.6 of the specifications states that "[a]ll heating and cooling coils, fan and related equipment will be removable from the autoclave without disturbing the internal insulation or ductworks." Paragraph 19.0 lists functional characteristics of the fan system, including a minimum average velocity for air circulation, a requirement for the mounting of the fan motor in a pressure housing, and a requirement for motors in excess of 50 horsepower to be equipped with a part winding or auto transformer.

Without providing any detail, Taricco asserts that these specifications are proprietary to TEC and should be rewritten to increase competition by permitting other designs. The agency states that its specifications were drafted to incorporate desirable features which have proved to be necessary in its past experience with autoclaves at Corpus Christi; the agency further reports that it reviewed all of the specifications originally challenged by Taricco and has amended the RFP to remove references to TEC proprietary designs. In its comments on the agency report, the protester does not substantively address the Army's position, except to state that there are remaining "technical issues."

While agencies must specify their needs in a manner designed to achieve full and open competition and should include restrictive provisions and specifications only to the extent

²Thus, we will not consider the other specific contentions concerning the alleged proprietary nature of specifications raised in Taricco's protest.

necessary to satisfy the agency's needs, the determination of those needs and the best method of accommodating them are primarily within the agency's discretion and we will not question the agency's determination unless the record clearly shows that it was without a reasonable basis. CardioMetrix, B-257408, Aug. 3, 1994, 94-2 CPD ¶ 57.

Paragraphs 12.6 and 19.0 are broadly written as functional specifications without reference to the equipment of any particular firm. The agency reports that the specifications were drafted to incorporate features found to be necessary in its experience with autoclaves. The protester has not refuted any portion of the agency's rationale and has instead merely requested that the protest be decided on the existing record. Under these circumstances, since the agency has provided a reasonable explanation for the manner in which its specifications were drafted, we have no basis to object to the challenged requirements. CardioMetrix, supra.

SECTIONS L AND M

Taricco generally complains that the RFP instructions to offerors on proposal contents (section L) and the evaluation methodology (section M) are overly complex involving a "layering of requirements" which serve to deter small businesses from competing. Taricco invites a comparison to earlier autoclave procurements which were conducted on a simpler basis involving award to the lowest-priced technically acceptable offeror.

The agency notes that the autoclave being purchased here is larger and more complex than any other it has purchased and states that it is particularly concerned with quality. For these reasons, the Army explains that it was necessary to structure a "best value" procurement with an emphasis on quality as well as price. Accordingly, in sections L and M, the Army states that it made provisions for the submission and evaluation of separate management, technical, and past performance volumes of proposals. Taricco has provided no substantive response to the agency's position and has merely requested a decision on the existing record.

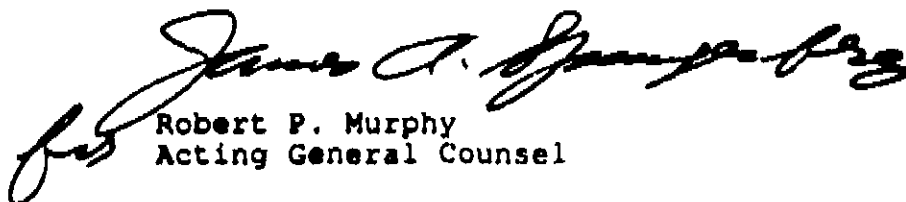
We have reviewed sections L and M and, on their face, they appear to be rather commonplace provisions to accomplish a "best value" procurement. In addition, we note that the computer-controlled autoclave to be designed, built, and installed by the contractor consists of a variety of subsystems including a 10-foot by 50-foot pressurized vessel, an internal cooling system, a gas-fired heating system, and a nitrogen gas pressurization and control system; the entire system is to be integrated into an existing building at Corpus Christi. In light of the

apparent complexity of the system and the agency's reasonable explanation in support of the need to conduct a "best value" procurement, in the absence of any response from Taricco, we have no basis upon which to object to sections L and M of the RFP. CardioMetrix, supra.

BAD FAITH

Taricco infers from the earlier inclusion of allegedly proprietary specifications in the RFP and the allegedly overly complex sections L and M, as well as the initial reluctance of the Army to set the procurement aside after it knew of Taricco's interest as a small business, that contracting officials have acted in bad faith to favor TEC. Beyond this inference, nothing in the record supports a conclusion that the Army acted in bad faith; on the contrary, it appears that the agency acted reasonably and promptly in amending its RFP in response to the protester's many objections. We will not attribute improper motives to government officials on the basis of inference or supposition. See Cajal Defense Support Co.--Recon., B-240477.2, Sept. 14, 1990, 90-2 CPD ¶ 215.

The protest is denied.


Robert P. Murphy
Acting General Counsel